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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 17

JESSE M. CALHOON, AS PRESIDENT, OR HERBERT W. PETERS, AS SECRETARY-TREASURER OF DISTRICT NO. 1, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,
Petitioner,

v.

RAYMOND H. HARVEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

INTEREST OF THE AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The AFL-CIO has affiliated with it 131 national and international labor organizations representing a total membership of about thirteen million. The Federation wants these organizations and their affiliated local unions to be responsive to the needs and desires of their members. It also wants them to be effective instruments for advancing the economic and social interests of the employees they represent. Fulfillment of this dual objective calls for knowledgeable and responsible union leaders, chosen in accordance with standards and procedures freely adopted by each organization, with a minimum of interference from outside sources.

Petitioner will naturally be most concerned with the particular facts of the instant case. But much more is at stake. This case provides this Court with its first opportunity to consider the relationship of titles I and IV of the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, 73 Stat. 519, 29 U.S.C. §401 *et seq.*, in their application to the critical subject of union elections. Inevitably, the Court's decision will do much toward laying down the ground rules governing any attack upon a union's electoral processes. The AFL-CIO is vitally interested in seeing that this Court is aware of what its decision will mean for union democracy and for union effectiveness. We feel our presentation, which will be less concerned with the facts of this case than with the whole range of legal remedies available to anyone challenging union election procedures, will assist the Court in interpreting the statute so as best to promote both individual and organizational rights and responsibilities.

ARGUMENT

A fair reading of the statutory language in titles I and IV of the Landrum-Griffin Act, and of the accompanying legislative materials, establishes that Congress intended three separate and distinct methods to be available for

challenging a labor organization's election standards and procedures. The method to be employed in any given case depends on the nature and timing of the challenge: (1) a member may bring a private suit in federal court to prevent discrimination against him in the exercise of certain basic individual rights guaranteed by title I, such as the right to vote, and a candidate may bring a private suit in federal court to enforce certain designated campaigning rights guaranteed by title IV; (2) prior to an election, a member may bring a private suit in state court to enforce compliance with the union's constitution and bylaws; and (3) after an election, the Secretary of Labor, upon receiving a complaint from an aggrieved member and upon finding probable cause to believe that an unremedied violation of the election procedures prescribed by title IV has occurred, may bring a suit in federal court to set aside the affected election.

We do not understand the Court of Appeals below, or respondents here, to dispute the above analysis in this case. Their approach, rather, has been to try to transform what is at bottom an issue regarding the reasonableness of the qualifications prescribed for candidates for union office, a matter which title IV of the Act places in the hands of the Secretary of Labor, into an issue regarding the equal right to nominate candidates, a matter which title I makes subject to private suit. The effect is to circumvent the clearly demarcated channels of enforcement that Congress created. If a title IV question can be smuggled into title I in the present situation, the same maneuver can be executed in many other situations. We will show that such a result would be contrary to the law the Congress wrote, and contrary to the sound policy of allowing only a necessary minimum of outside interference with a labor organization's voluntarily adopted election standards and procedures.

I. Congress Intended Questions Regarding The Reasonableness Of The Eligibility Requirements For Union Office To Be

Governed By Title IV Of The Landrum-Griffin Act, Enforceable By The Secretary Of Labor, And Not By Title I, Enforceable By Private Suit.

Two easily demonstrated propositions will resolve the issue before this Court. First, Congress intended that questions bearing essentially on the reasonableness of the eligibility requirements for union office were to be governed by title IV of the Landrum-Griffin Act, and not by title I. Secondly, Congress deliberately chose to authorize the Secretary of Labor to contest the reasonableness of a union's qualifications on candidacies, and deliberately refused to allow individual union members to contest the matter in private suits.

As reported by the Senate Labor Committee, S. 1555, 86th Cong., 1st Sess. (1959), then known as the Kennedy-Ervin bill, had in its title III the precursor of the present elections provision, title IV. The bill contained no equivalent of the present title I, the so-called "Bill of Rights." Section 301(d) of the bill was almost identical to section 401(e) as enacted in providing, *inter alia*, that "'a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to reasonable qualifications uniformly imposed)." Section 302 was substantially the same as section 402 of the Act in authorizing the Secretary of Labor, upon complaint of a union member who had exhausted reasonable internal remedies for an alleged violation of the elections title (including violation of the union's own elections rules), to bring a federal court action "to set aside the invalid election."

Section 303 of S. 1555, not significantly different from section 403 of the present law, read as follows:

> "No labor organization subject to the provisions of this title shall be required by law to conduct elections of officers with greater frequency or in a different form

> or manner than is required by its own constitution or bylaws except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive."

Title III of the bill which reached the Senate floor amounted to a comprehensive federal code for the regulation of union elections, including both nominations and balloting. Section 303 expressly displaced all other law covering the conduct of such elections, with a single stated exception. Prior to a vote, existing procedures "to enforce the constitution and bylaws of a labor organization" could be utilized. This meant there could still be recourse to state courts through a private suit before the election to compel adherence to—but not variation from—the union's own election rules. Otherwise, the Secretary of Labor was to have exclusive authority to challenge election procedures.

Each of these points was underlined by the Senate Labor Committee's Report. The bill would preserve "rights and remedies which union members have under existing law *to insure compliance with provisions of a union's constitution and bylaws* relating to elections prior to the conduct of an election." S. Rep. No. 187, 86th Cong., 1st Sess., p. 21 (1959). (Emphasis supplied.) But in the case of "overthrowing an improperly held election and holding a new election, the Federal remedy is made the sole remedy and private litigation would be precluded." *Ibid.* Some of the thinking behind this restrictive approach is indicated by the Committee's reason for requiring a member to pursue internal remedies before filing a complaint with the Secretary: "This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." *Ibid.*

The need for federal law to occupy the elections field was explained as follows:

> "There is great need for uniformity in the laws governing union elections. *** It is easier to enforce one uniform rule than a crazy quilt of State legislation and court decisions. Ill-considered State laws would interfere with the national labor policy. Too stringent laws would handicap unions in dealing with employers. Too frequent elections may keep a union in a state of turmoil and could result in instability in collective bargaining relationships with employers." S. Rep. No. 187, 86th Cong., 1st Sess., pp. 21-22 (1959).

It is thus apparent that as S. 1555 cleared the Senate Labor Committee, it left no room for a private suit in either federal or state court aimed, as the present suit is aimed, at compelling deviation from, rather than adherence to, a union's own election standards and procedures. Respondents have rightly concluded they must look elsewhere if they are to find any warrant for their present action.[1]

Their reliance is on title I of the Act, which was added on the Senate floor. The Senate first adopted, by a vote of 47 to 46, a "Bill of Rights" amendment proposed by Senator

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[1] One academic commentator has argued that even those portions of title III of the Senate bill taken over without significant change into title IV of the Act are enforceable by private pre-election suits in either federal or state courts. Summers, "Preemption and the Labor Reform Act—Dual Rights and Remedies," 22 Ohio State L.J. 119, 135-140 (1961). There is not a hint in the statutory language or legislative history that Congress shared this notion, and in our view the indications all point the other way. See pp. 8-11, *infra*. The Summers view has consistently been rejected by the lower federal courts. See, *e.g.*, *Colpo* v. *Teamsters Local 107*, 201 F. Supp. 307 (D. Del. 1961), *vacated as moot* 305 F. 2d 362 (3d Cir. 1962), *cert. den.* 371 U.S. 890; *Johnson* v. *San Diego Waiters and Bartenders*, 190 F. Supp. 444 (S.D. Calif. 1961); *Jackson* v. *Longshoremen*, 212 F. Supp. 79 (E.D. La. 1962). *Cf. Mamula* v. *Steelworkers*, 304 F. 2d 108, 111 (3d Cir. 1962), *cert. den.* 371 U.S. 823; *Robins* v. *Rarback*, 325 F. 2d 929, 930-31 (2d Cir. 1963).

McClellan. 105 Daily Cong. Rec. 5827 (April 22, 1959), 2 Leg. Hist. LMRDA 1119 (NLRB ed.).[2] Three days later, a modified version offered by Senator Kuchel was substituted, 105 Daily Cong. Rec. 6030 (April 25, 1959), 2 Leg. Hist. 1239, and so far as is pertinent here, the title was enacted in this form. Section 101(a)(1) provides that every union member shall have "equal rights" to "nominate candidates," to "vote" in "elections or referendums," to "attend membership meetings," and to "participate in the deliberations and voting upon the business" of those meetings, "subject to reasonable rules and regulations" in the union's constitution or bylaws. Section 102 provides for civil enforcement of these and other title I rights through a private suit in federal district court.

In urging adoption of his original "equal rights" section, which was somewhat broader and less specific than the Kuchel substitute, Senator McClellan did not discuss whether the provision might overlap the regulatory scheme set forth in title III (now title IV). The Senator simply indicated that his amendment was designed to prevent "the denial of the basic human rights on which our very freedom was founded." 105 Daily Cong. Rec. 5811 (April 22, 1959), 2 Leg. Hist. 1103.

Senator Kuchel, however, could hardly have been plainer regarding the effect of his more precisely drawn substitute on qualifications for union office. Said he: "I do not believe that in any fashion the equal rights section touches what the provisions of the constitution or bylaws might be with respect to the right to run for office." 105 Daily Cong. Rec. 6023 (April 25, 1959), 2 Leg. Hist. 1232. Both Senators Kennedy and Cooper then observed that the "right to be a candidate" was guaranteed by the elections title of the

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[2] Reference is to the two-volume Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 prepared by the National Labor Relations Board, hereinafter cited "Leg. Hist."

bill; Senator Kennedy said this was one of the *"other* rights" which was secured *"in addition* to the rights guaranteed in the bill of rights." 105 Daily Cong. Rec. 6024 (April 25, 1959), 2 Leg. Hist. 1233. (Emphasis supplied.) The accent was on the separate and distinct functions of the two titles, and no overlap as to eligibility requirements was envisaged. Indeed, it was one of Senator Goldwater's major complaints against the Kuchel substitute that it gave "no protection of a member's right to be a candidate for or to hold union office," but instead left this matter to be dealt with solely by the Secretary of Labor under title IV. 105 Daily Cong. Rec. 9108, 9114 (June 8, 1959), 2 Leg. Hist. 1280, 1286.

Section 101(a)(1) is not even primarily directed toward the substance of a union's standards; it is primarily directed toward their "equal" application. As expressed by supporters of the Landrum-Griffin bill on the House Education and Labor Committee, the target is "*[d]iscrimination* against groups or classes of members" in the exercise of "specifically enumerated rights." H. Rep. No. 741, 86th Cong., 1st Sess., p. 95 (1959) (Minority Views). (Emphasis supplied.) Those "specifically enumerated rights" include the "equal" right "to nominate candidates." They do not necessarily encompass any particular nomination standards or procedures. And what is most important, they do not cover at all the right to be a candidate.

The most significant effect of the dichotomy between titles I and IV is of course the difference in the mode of enforcement. Title I for the most part, and so far as is relevant here, is enforceable by private suit in federal district court. Title IV for the most part, and so far as is relevant here, is enforceable by the Secretary of Labor in a post-election suit. Congress made each decision deliberately after fully canvassing the alternatives.

The original McClellan "Bill of Rights" would have been

enforceable by the Secretary of Labor. Senator Kuchel characterized as "one of the major changes" in his title I substitute the provision for private enforcement in place of enforcement by the Secretary. 105 Daily Cong. Rec. 6021, 6023 (April 25, 1959), 2 Leg. Hist. 1230, 1232.

A bill sponsored by the Eisenhower Administration and introduced by Senator Goldwater, S. 748, 86th Cong., 1st Sess., §§303(d), 405 (1959), would have authorized actions by either union members or the Secretary of Labor to remedy violations of the elections provisions. As passed by the House, the Landrum-Griffin bill, H. R. 8400, 86th Cong., 1st Sess., §402(a)(1959), empowered union members, but not the Secretary, to sue. The Conference Committee accepted the Senate bill's provision for enforcement by the Secretary of Labor rather than by private actions. See H. Conf. Rep. No. 1147, 86th Cong., 1st Sess., p. 35 (1959); 105 Daily Cong. Rec. 16415 (Sept. 3, 1959), 2 Leg. Hist. 1433 (Sen. Kennedy). Whenever there was to be any deviation from this pattern, and individual suits were to be allowed, *e.g.*, to enforce a candidate's right to distribute campaign literature,[3] express language to that effect was inserted in the statute. 73 Stat. 532, §401(e)(1959), 29 U.S.C. §481(e).

The exclusive power of the Secretary of Labor to enforce Title IV as enacted, with the exception just noted and with the exception of private pre-election suits to compel compliance with a union's own election rules, was acknowledged or assumed on all sides. Senator Kennedy explained:

> "I believe we have established certain precise rights. In the case of elections we preempt action for the Federal Government after the election is held. *** Prior to the day of an election an individual can sue

[3] Private suits to enforce this particular right were authorized by an amendment added on the floor of the Senate. 105 Daily Cong. Rec. 6031-33 (April 25, 1959), 2 Leg. Hist. 1240-42.

> in a State. The day after an election the Secretary of Labor assumes jurisdiction. ***
>
> "When unfairness is committed in an election, the bill provides that the Secretary of Labor shall have the right to set the election aside. I do not think State laws provide adequate remedies in that field; and, for that reason, this bill does." 105 Daily Cong. Rec. 5819-21 (April 22, 1959), 2 Leg. Hist. 1111-13.

So far as the issue before this Court is concerned, the comments of the minority members of the Senate Labor Committee on the elections title of S. 1555 as reported are as pertinent now as when they were made:

> "*Election safeguards.*—(a) Creates a Federal court action by the Secretary to challenge an election which has already been held and preempts any similar State remedy. The Secretary's remedy is exclusive and is the only one the union member may use—he *loses* his State remedy.
>
> "(b) But if there are abuses in connection with an election prior to its being held, the bill provides no Federal remedy at all. The union member's only relief can come only through whatever State law may exist on this subject." S. Rep. No. 187, 86th Cong., 1st Sess., p. 104 (1959)(Minority Views). (Emphasis in the original.)

In an analysis of S. 1555 as passed by the Senate, Senator Goldwater objected that the relevant portion of title IV "does not even extend the right to a union member to bring a civil suit in Federal court which is provided for violation of the rights set forth in title I." 105 Daily Cong. Rec. 9114 (June 8, 1959), 2 Leg. Hist. 1286. He added: "Section 403 provides that there shall be no preemption of State remedies with respect to *violations* of the provisions of a union's constitution or bylaws pertaining to the election of officers prior to the conduct of the election." 105 Daily

Cong. Rec. 9115 (June 8, 1959), 2 Leg. Hist. 1287. (Emphasis supplied.)

Although section 603(a) of the Act preserves union members' rights under state law except as otherwise provided in the Act, section 403 makes plain that as to union elections the federal procedure is exclusive apart from "[e]xisting rights and remedies to enforce the constitution and bylaws." Former Professor Archibald Cox, Senator Kennedy's principal technical advisor on the bill, confirms and explains this as follows:

> "Section 403 provides careful and apparently sound rules concerning the relation between state and federal law. State regulation of union elections is barred in the interest of uniformity. ***
>
> "Since these considerations do not apply to a suit to enforce a union's own constitution or by-laws, section 403 preserves state remedies prior to an election."[4]

So a state court action to *contest* the constitutional eligibility requirements for union office here would also be foreclosed. Respondents' proper recourse would be a timely complaint to the Secretary of Labor.

The congressional scheme for elections, in sum, was (1) to authorize private suits in federal district court to enforce certain rights of individual members guaranteed by title I, such as the "equal" right to vote and the "equal" right to nominate candidates, and to enforce certain rights of individual candidates guaranteed by title IV, such as the right to have campaign literature distributed; (2) to leave

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[4] Cox, "Internal Affairs of Labor Unions Under the Labor Reform Act of 1959," 58 Mich. L. Rev. 819, 845-46 (1960). In discussing §401(e), Professor Cox noted that "the Secretary is in charge of all proceedings to enforce the elections requirements." *Id.* at 834, n. 52.

available existing state remedies to enforce a union's election rules through pre-election private suits; and (3) to grant to the Secretary of Labor the exclusive power to bring post-election suits in federal district court to challenge an election on the ground it was held in violation of title IV or in violation of the union's constitution and bylaws. Respondents in this litigation do not dispute the foregoing analysis [5]—only its necessary consequences.

Respondents alleged, and the Court of Appeals below agreed, that their "equal" right "to nominate candidates" had been infringed because of the combined effect of provisions in the union's constitution and bylaws that a member (1) could only nominate himself for office; and (2) had to put in a stipulated amount of time working at the trade in order to be eligible for union office, and, to be eligible for district president, had to have served previously as a full-time, elected union official (R. 5-7, 123-24).[6] The short answer to this contention has been made by petitioner. Respondents' "equal rights" to nominate candidates for union office were not infringed; they were exercised. Each respondent sought to nominate himself for union office, and each did so (R. 27). The self-nomination procedure was as effective as any other nominating procedure would have

[5] Respondents invoked the jurisdiction of the District Court below under §102 of the Landrum-Griffin Act, and the Court of Appeals held that federal jurisdiction was properly so laid, on the ground that the complaint alleged a denial of the "equal" right "to nominate candidates" secured by §101(a)(1) of the Act (R.2, 119). No one doubts respondents could have sued to enforce their "equal" right to nominate candidates, if that was what their suit was really all about.

[6] The Court of Appeals did not hold that the "self-nomination restriction," standing alone, violated §101(a)(1); it grounded its finding of a violation upon the "*combined effect* of the *eligibility requirements* and the restriction to self-nomination" (R. 123-24). (Emphasis supplied.) In its foray into the area of "eligibility requirements" the court trod upon territory within the exclusive domain of the Secretary of Labor.

been. That each respondent was subsequently disqualified *as a candidate* by the union's credentials committee for failure to put in the required amount of time working at the trade may raise a question under title IV's guarantee of the right to be a candidate, but it has nothing whatsoever to do with title I's guarantee of the right to nominate.

Any other conclusion makes a mockery of the carefully delineated regulatory system devised by Congress, under which questions regarding the reasonableness of a union's qualifications for office were to be governed by title IV of the Act and not by title I. Obviously, *any* qualification on the right to run for office limits the persons whom it is feasible to nominate as a candidate. But title I's concern is who may be a nominator, not who may be a nominee and candidate. The latter issue is to be controlled solely by title IV.

If the compartmentalized approach which Congress so deliberately chose is to have any meaning, that distinction must be observed. Otherwise, the ingenuity of counsel can be relied upon to convert almost every restriction on the right to be a candidate into an alleged violation of the "equal" right to nominate, and almost every instance of election misconduct into an alleged violation of the "equal" right to vote. This is no fanciful supposition. Already the Third Circuit has had to point out that title I's equal right to nominate does not embrace a candidate's right to be nominated, but only a member's right to make nominations, *Mamula* v. *Steelworkers*, 304 F. 2d 108, 113 (3d Cir. 1962), *cert. den.* 371 U.S. 823, and the Second Circuit has had to rule that title I's equal right to vote does not cover "the entire conduct of union elections on the theory that the right to vote is a right to cast an 'effective' vote, and that a vote cannot be effective unless the election is properly

conducted in all its aspects," *Robins* v. *Rarback*, 325 F. 2d 929, 930 (2d Cir. 1963).[7]

Adherence to the law the Congress wrote demands that actions to vary a union's election standards and procedures be limited to post-election suits by the Secretary of Labor under title IV, with the only exceptions being private suits under title I to enforce the "equal" right to nominate candidates and to vote, and under title IV to enforce candidates' campaigning rights. As we shall next show, sound labor policy supports what the statutory language and legislative history require.

II. The Congressional Policies Of Securing Uniform Legal Standards For Union Elections And Of Maintaining A Maximum Of Union Self-Government Are Best Promoted By Leaving Enforcement Of The Elections Provisions Of The Act To The Secretary Of Labor.

Several distinct but intertwined strands of thought running through the legislative materials disclose the various policies which Congress sought to promote by entrusting enforcement of most of the elections provisions of the Landrum-Griffin Act to the Secretary of Labor, and by restricting private suits to the enforcement of certain

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[7] Some overlap between titles I and IV as to the substantive regulation of voting rights may be possible, since §101(a)(1) guarantees the "equal" right to vote, §401(e) likewise guarantees the right to vote, and §401(e) requires adequate safeguards to ensure a fair election. *Cf. Beckman* v. *Iron Workers Local 46*, 314 F. 2d 848, 850 (7th Cir. 1963) ("District Judge indicated in his opinion that he agreed with defendants' position that if the right to vote, as guaranteed by 29 U.S.C. §411(a)(1), was preserved, and there was here a mere infirmity or irregularity in the conduct of the election (not tantamount to denial of the right to vote) then a Title IV question would be presented"). Title I, naturally, could come into play only prior to the election, as §403 provides: "The remedy provided by this title for challenging an election already conducted shall be exclusive." No overlap at all exists in the case of eligibility requirements, since they are governed entirely by title IV.

enumerated rights of individual members under title I and of individual candidates under title IV. Among these policy goals were the following:

1. *Uniformity in the law through administration by a specialized agency.* In reporting out S. 1555, the Senate Labor Committee declared: "There is great need for uniformity in the laws governing union elections." S. Rep. No. 187, 86th Cong., 1st Sess., p. 21 (1959). Under the bill as reported, "private litigation would be precluded," except for pre-election actions to enforce the union's own election rules. *Ibid.* Uniformity would be attained not just by laying down a single rule of federal law, but by assigning its enforcement to a "centralized administrative agency, *** equipped with its specialized knowledge and cumulative experience." *Cf. San Diego Building Trades Council* v. *Garmon,* 359 U. S. 236, 242. As this Court has said: "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner* v. *Teamsters Local 776,* 346 U. S. 485, 490-91. Senator Kennedy underscored this point when he reported to the Senate on the conference:

> "The Landrum-Griffin bill would have substituted a *variety of suits* by individual members for enforcement by the Secretary of Labor. The House conferees receded from this position and the Senate provision was restored." 105 Daily Cong. Rec. 16415 (Sept. 3, 1959), 2 Leg. Hist. 1433. (Emphasis supplied.)

The provisions in the Act which authorize certain individual suits in connection with elections impinge on this principle of uniformity, but only in a limited fashion. Title I suits to protect the "equal" rights to vote and to nominate candidates merely require a court to see that the union's own rules are applied to all members without arbitrary distinctions or classifications. Title IV suits to protect a

candidate's campaigning rights deal with a narrow and well-defined set of union obligations.[8] None of these cases call for the sort of judgment needed in determining what are "reasonable qualifications" for union office. In the main, as emphasized by the conference agreement to accept the Senate rather than the House provision on enforcement, the concept of uniformity in the regulation of elections was heeded.

2. *Maximum union autonomy.* As the first of three principles followed in acting on S. 1555, the Senate Labor Committee listed "the desirability of minimum interference by Government in the internal affairs of any private organization." S. Rep. No. 187, 86th Cong., 1st Sess., p. 7 (1959). The Committee commented that "in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents." *Ibid.* After discussing the provision for enforcement of the elections title by the Secretary of Labor upon complaint of a member who had pursued any available internal remedies in a timely manner, the Committee stated: "This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." *Id.* at 21.

Invalidation of an election which has been conducted improperly is a stern sanction if an international fails in its duty. Had Congress thought it necessary to trench further upon union autonomy by permitting wider judicial regulation at the behest of individual members, such regulation could easily have been authorized. However, apart from the specifically enumerated rights in titles I and IV which

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[8] Sen. Kennedy felt even this type of right would have been adequately protected by S. 1555's provision that the Secretary of Labor could sue to set aside an election in the event of a violation. 105 Daily Cong. Rec. 5826 (April 22, 1959), 2 Leg. Hist. 1118.

amendments added on the Senate floor made enforceable by private suit, the congressional judgment was that the elections provisions of the Act would be adequately enforced through post-election suits by the Secretary of Labor. That judgment must be respected. Broadscale pre-election intrusion by the courts would thwart the congressional policy of encouraging a union to police its own election standards and procedures.

Judge Paul Hays, formerly professor of labor law at Columbia, expressly relied upon this element of minimizing intervention in a union's internal affairs, when he spoke for the majority of a Second Circuit panel in striking down an effort to rely on the equal-right-to-vote clause of section 101(a)(1) as the basis for a private suit to enjoin certain alleged "electoral abuses," in *Robins* v. *Rarback*, 325 F. 2d 929, 931 (2d Cir. 1963):

> "It seems most unlikely that Congress would have provided these elaborate protections against unjustifiable interference with internal union processes if it had intended at the same time that the courts should be free under Title I of the Act to reach the same result at the instance of the complaining member alone and without any requirement of exhaustion of remedies or investigation or finding by the Secretary."

What Judge Hays said about trying to use the equal right to vote in order to circumvent the procedural barriers to title IV's more extensive arsenal of rights and remedies is equally applicable to the present attempt to use the equal right to nominate for the same purpose.

3. *Enforcement of public or group rights by a public agency, and of individual rights by individual suit.* The notion that public or group rights should be enforced by a public agency and that individual rights should be enforced by individual suit also seems to have entered into the thinking of Congress in deciding upon enforcement procedures.

In arguing for enforcement of title IV by the Secretary of Labor, Senator Goldwater remarked: "Since the election standards are designed to insure honest elections for the benefit of all union members as a matter of public policy, their violation is a matter of public rather than exclusively individual concern." 105 Daily Cong. Rec. 15119 (Aug. 20, 1959), 2 Leg. Hist. 1359.[9] On the other hand, title I's "Bill of Rights" was intended to cover certain basic individual rights, and it was felt that "giving this type of right to the aggrieved employee member himself is in the interest of justice, and therefore we propose to eliminate from the bill the right of the Secretary of Labor to sue in his behalf." 105 Daily Cong. Rec. 6023 (April 25, 1959), 2 Leg. Hist. 1232 (Sen. Kuchel).

Section 101(a)(1) is aimed at eliminating *discrimination* among union-members in the exercise of certain specifically enumerated rights, and other sections of title I are concerned with such matters as free speech and freedom from improper discipline. Obviously, these are items of peculiarly personal concern. Although it would be going too far to suggest there is any sharp line between the two categories, it is also obvious that when one reaches such issues as the reasonableness of a union's qualifications for office, there is a shift over into an area of more concern to the organization as a whole. Accordingly, there is logic in limiting the capacity of an individual member to act directly to obtain judicial alteration of his union's organizational structure, standards, or procedures, while granting him the power to contest in a private suit his union's denying him rights and privileges accorded his fellow members.

The nominating procedures and eligibility requirements at issue in this very case illustrate the need for an expert's

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[9] Sen. Goldwater would have had title IV enforceable both by the Secretary of Labor and by private suit, but his proposal to this effect was not adopted. See p. 9, *supra*.

appraisal to avoid improper interference with a labor organization's autonomy. What may seem to the inexperienced eye to be an attempt to block access to union office through the imposition of arbitrary standards may be viewed by a person familiar with trade union practice as an entirely reasonable prescription for ensuring the knowledgeable and responsible union leadership needed to advance the best interests of the union's membership. The Court of Appeals below found offensive the "combined effect of the eligibility requirements and the restriction to self-nomination" (R. 123). The eligibility requirements for office included a stipulated amount of sea time during the preceding three years, except in the case of incumbent officers. Candidates for district president also had to have prior service in some full-time elective union office (R. 70, 123). Restrictions of this general nature are not at all uncommon among labor organizations, in fact if not by rule, particularly at the national or international level.

The Bureau of Labor Statistics, in a study of international constitutions, reports:

> "Union constitutions frequently required that prospective international union officers must have been union members for a specified number of years, and must have obtained some 'on the job' experience in the trades or industries represented by the unions. Such requirements, it is reasonable to assume, were designed to assure a national leadership which has established a record of participation in union affairs and is familiar with the problems of the industry. ***
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> "Constitutions which listed trade experience as one of the qualifications usually waived this requirement for members holding union office or those employed on the union staffs."[10]

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[10] U.S. Dept. Labor, Bur. of Labor Stat. Bull. No. 1239, *Union Constitution Provisions: Election and Tenure of National and International Union Officers* 1-2 (1958).

Although union membership and trade experience, often for a specified period, may be the only formal requirements for elective office in many organizations, labor scholar William Leiserson was only being realistic when he commented:

> "*** the constitutional qualifications have little to do with the actual selection of the president and other executives. *** The president usually has a record of previous office holding, and other national executives have had experience as local or district officers. ***
>
> "The experience in previous officeholding that is necessary to qualify for president is acquired by successful union activity."[11]

An argument can certainly be made that a union ought to be able to impose as a formal qualification what the memberships of other organizations insist upon in actual practice.

It is not really important whether this Court concludes that any of these various eligibility standards, most of which are presumably accepted as fair and reasonable in the case of international offices, may likewise be applicable, in some form or other, to the district offices involved here.[12] What is important is recognition that a proper determination calls for an informed, expert judgment, and that Congress entrusted the task in the first instance to the Secretary of Labor. Three highly respected labor arbitrators serving on a Presidential Board of Inquiry reported to President

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[11] Leiserson, *American Trade Union Democracy*, 242, 245 (Columbia, 1959).

[12] District No. 1 of the Marine Engineers appears technically to be a local union within the meaning of the Landrum-Griffin Act. It has certain attributes, however, of a higher level body. The district was reorganized in 1960 through the consolidation of a dozen subordinate organizations into a single body having territorial jurisdiction covering the East and Gulf coasts (R. 32-33, 37 [Ex. "A," p. 2], 56-57).

Kennedy in 1961 that the "collective bargaining structure in the maritime industry is most complex," and that the "collective bargaining relationships in this industry are *** exceedingly complicated and confusing" (R. 30). To ensure that even district officers would be capable of effective representation of employees in such an industry, a labor specialist might well conclude that the experience required by the Marine Engineers' constitution was not unreasonable. But of course the merits of the union's qualifications for office are not our concern in this case.

The inadequacy of the treatment by the Court of Appeals below is epitomized by its failure to realize that the provision for self-nomination (by letter) is a liberal, not a restrictive, arrangement in a labor organization. This is especially true in a union of seafaring men, where a member and his supporters might not be able to attend a nominations meeting. In the survey by the Bureau of Labor Statistics previously mentioned, the most open system of nominating was found to be that whereby "[a]few unions permitted any member to nominate himself, provided that he was able to obtain sufficient endorsement."[13] Here there was not even a need for endorsements or seconds. Respondents shared the "equal" right of self-nomination with all their fellow members; and, even if the "reasonableness" of the nominating procedure may be litigated under title I, the District Court was surely correct in holding it reasonable (R. 114).

The Court of Appeals below, relying on the sophistry that a self-nomination procedure automatically equates the right to be a candidate with the right to nominate (R. 123), would thrust directly upon the federal courts the critical function of passing upon the reasonableness of a union's qualifications for office. The elaborate procedures so carefully laid out in the statute would thus be bypassed, and

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[13] Bur. of Labor Stat. Bull. No. 1239, *supra* note 10, at 7.

the congressional policies of promoting the uniform administration of the law by a specialized agency, and of maintaining a maximum of union autonomy, would be frustrated.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the brief for petitioner, the judgment of the Court of Appeals below should be reversed.

Respectfully submitted,

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